No. 14952

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

[illegible] Joseph Bruno and Joseph Victor Bruno,

Appellants,

vs.

[illegible],

Appellee.

Appeal from the United States District Court for the Northern District of California, Southern Division.

Brief for Appellant, Joseph Victor Bruno.

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No. 14955.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

EDWARD RAYMOND EGE, JOSEPH BOYD and JOSEPH VICTOR BRUNO,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal From the United States District Court for the Northern District of California, Southern Division.

Brief for Appellant, Joseph Victor Bruno.

Joseph Victor Bruno (hereinafter referred to as Bruno), appellant herein, together with two other persons was indicted on June 15, 1955, in the United States District Court for the Northern District of California and charged with conspiring knowingly to transport women between California and Nevada for the purpose of prostitution (Title 18, U. S. C., Sec. 371; Title 18, U. S. C., Sec. 2421). [R. 3-6.] Following a trial by jury, appellant was convicted and sentenced to five years imprisonment. [R. 37-39.]

This is an appeal from the judgment of the court. [R. 42.]

Jurisdictional Statement.

1. The jurisdiction of the District Court:

Title 18, U. S. C., Section 3231, provides that "The District courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." The Constitution of the United States, Amendment 6:

> "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury in the state and district wherein the crime shall have been committed."

2. The jurisdiction of this Court upon appeal to review the judgment in question

Title 28, U. S. C., Sec. 1291, provides:

> "The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court."

Title 28, U. S. C., Section 1294(1) provides:

> "Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:
>
> "(1) From a district court of the United States to the court of appeals for the circuit embracing the district;"

3. The pleadings necessary to show the existence of jurisdiction:

(a) The Indictment. [R. 3-6.]

(b) The Bill of Particulars. [R. 15-16.]

(c) Motion for separation of counts of indictment for trial [R. 22-24], and Court's denial thereof. [R. 25.]

(d) Motion for judgment of acquittal at end of Government's case and Court's denial thereof. [R. 280.]

(e) Renewal of motion for judgment of acquittal at the end of all evidence renewed and denied after return of verdict. [R. 30.]

(f) Verdict of jury. [R. 29.]

(g) Motion for New Trial [R. 34-36] and denial thereof. [R. 37.]

(h) Motion for arrest of judgment and denial thereof. [R. 37, 39-40.]

(i) Judgment and Commitment. [R. 52-53.]

(j) Notice of Appeal. [R. 41-42.]

(k) Statements of Points on Appeal. [R. 369-370.]

4. The facts disclosing the basis upon which it was contended that the District Court had jurisdiction and the facts disclosing that this Court has jurisdiction upon appeal to review the judgment in question:

In the introductory portion of this brief these facts have been concisely stated and will be treated more fully in the subsequent development of the facts of the case. To avoid repetition, the statement is omitted here.

The Indictment.

The indictment was in two counts. Although the appellant was made a defendant in only the second count, inasmuch as the prosecution contended that both counts related to the same subject matter, both will be reproduced. The indictment provides as follows:

INDICTMENT.

First Count: (Title 18, United States Code, Sec. 2421). The Grand Jury charges that:

Edward Raymond Ege, defendant herein, did on or about the 17th day of October, 1953, in the City and County of San Francisco, State and Northern District of California, knowingly transport in interstate commerce, to wit, from San Francisco, California, to Scottsdale, Arizona, a woman for the purpose of prostitution.

Second Count: (Title 18, United States Code, Sec. 371). The Grand Jury further charges:

That Edward Raymond Ege, Joseph Boyd, alias Joe Boyd, and Joseph Victor Bruno, at a time and place to the Grand Jury unknown, in violation of Title 18, United States Code, Section 371, did conspire together, and with other persons to the Grand Jury unknown, to commit an offense against the laws of the United States of America, in that they and each of them did conspire, in violation of Title 18, United States Code, Section 2421, knowingly to transport women between California and Arizona and California and Nevada for the purpose of prostitution.

Thereafter and during the existence of said conspiracy and in furtherance thereof and to effect the objects thereof, one or more of the said defendants, hereinafter mentioned by name, did the following acts.

Overt Acts.

1. In June, 1953, defendants Joseph Boyd, alias Joe Boyd, and Edward Raymond Ege, went to 2545 Noriega Street, San Francisco, California, State and Northern District of California.

2. In September, 1953, defendant Edward Raymond Ege, took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City and County of San Francisco, State and Northern District of California, to 395 Monterey Boulevard of said City.

3. In September, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege had a conversation with Constance Marie Bell.

4. In October, 1953, defendant Edward Raymond Ege drove an automobile from Folsom, California, to 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California.

5. In October, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege, gave the telephone number in Arizona of defendant Joseph Boyd, alias Joe Boyd, to Constance Marie Bell.

6. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with defendant Joseph Boyd, alias Joe Boyd.

7. In October, 1953, defendant Joseph Boyd, alias Joe Boyd, drove Constance Marie Bell in an automobile from Phoenix, Arizona, to Scottsdale, Arizona.

8. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with Ed-

ward Raymond Ege in the City and County of San Francisco, State and Northern District of California.

9. In October, 1953, defendant Joseph Victor Bruno drove Constance Marie Bell from Bakersfield, California, to Delano, California.

10. In October, 1953, in the City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege took the sum of approximately $700 from Constance Marie Bell.

11. In October, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the County of Yolo, State of California.

12. In November, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the City of Barstow, State of California.

13. In November, 1953, in the City of Barstow, State of California, defendant Edward Raymond Ege took the sum of approximately $900 from Constance Marie Bell.

14. In December, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City of Barstow, State of California, to the City of Las Vegas, State of Nevada.

A True Bill.

/s/ D. Gordon Tyndall,
Foreman.

Statutes Involved.

Title 18, U. S. C., Section 371, provides:

> "If two or more persons conspire either to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be (punished as in such statute provided)."

Title 18, U. S. C., Section 2421, provides:

> "Any person who shall knowingly . . . cause to be transported . . . in interstate . . . commerce . . . any woman or girl for the purpose of prostitution . . . shall be (punished as in such statute provided)."

Questions Presented.

1. Whether there was sufficient evidence to sustain a conviction of the appellant Joseph Victor Bruno.

2. Whether the evidence was sufficient to establish the jurisdiction and venue in the District Court for the Northern District of California.

3. Whether hearsay evidence of a defendant's reputation and character can be introduced as part of the Government's case in chief, and when not put in issue by the defendant.

4. Whether the appellant Joseph Victor Bruno was accorded a fair trial in the circumstances of this case.

5. Whether the Trial Court should have required special verdicts with respect to the overt acts alleged in the indictment under the circumstances of this case.

Specifications of Error Relied Upon.

1. The District Court erred in denying appellant's motion for a judgment of acquittal made at the close of the evidence offered by the Government and renewed at the close of all evidence and renewed after the verdict of the jury for the reasons that (a) there was insufficient evidence to sustain a conviction, and (b) the District Court was without jurisdiction to enter judgment against the appellant or to impose sentence upon him. Points on Appeal (c), (d) and (e). [R. 369.]

2. The appellant was denied a fair trial in that (a) hearsay evidence of appellant's reputation and character was introduced as part of Government's case, (b) the jury was prejudiced by remarks of the prosecutor and the Trial Judge as to safety of the Government witness, (c) a prejudicial variance developed among the indictment, the bill of particulars, and the Government's evidence, and (d) a separation of the Courts of the indictment for trial was denied by the Trial Court. Points on Appeal (a), (b) and (i). [R. 369-370.]

3. The Trial Court erred in refusing to require special verdicts on the overt acts alleged in the indictment. Point on Appeal (f) [R. 369].

The Evidence.

The evidence produced by the Government in support of the indictment (including the count to which appellant was not a party), consisted primarily of the testimony of the woman (Constance Marie Bell) alleged to have been transported and to have been the subject of the conspiracy. Portions of her testimony were sought to be corroborated by other witnesses. All of the evidence is such that it can be briefly summarized below:

Testimony Received.

(1) Constance Marie Bell.

I was born in 1934 [R. 58], had nine years schooling [R. 60], and had had various employments including California Physicians Service [R. 60], Wall Street Journal [R. 60], Hasting's Department Store [R. 60], and President Follies Theatre [R. 61, 94-95]; that I had adopted the name of Cindy Marlow [R. 100].

In September [R. 94], 1953, I commenced to work as a prostitute after a conversation with Ege [R. 64-67] as to how the business was conducted and the amount of money to be made [R. 66], and from that time until about Christmas, 1953, turned over a part of my earnings to Ege [R. 67, 81.] The relationship between myself and Ege came to a final and complete termination a few days before Christmas, 1953 [R. 90-91.]

During this period of time, I worked as a prostitute at Folsom, California [R. 68-69]; Scottsdale, Arizona [R. 75]; Delano, California [R. 79]; Yolo, California [R. 142-144]; Isleton, California [R. 81]; Barstow, California [R. 85-86]; and Las Vegas, Nevada [R. 87].

In the latter part of September or first of October [R. 173], Ege and I discussed the fact that one Judy Berg, a prostitute [R. 71-72] was going to Scottsdale, Arizona, to work in a house of prostitution operated there by Boyd [R. 73]; Ege furnished the sum of $50 [R. 71-72] to me to help defray my share of the cost of the trip [R. 71-72], the car used for the transportation being furnished by Berg [R. 72].

Arriving in Phoenix, Arizona, Berg contacted someone by telephone [R. 74] and arranged for herself and me to be taken to the house of prostitution at Scottsdale [R. 74].

In Scottsdale, I worked in the house of prostitution operated by Boyd [R. 75].

After a week or ten days at Scottsdale, Berg informed me that Ege would phone me at the telephone booth of a gasoline station outside of Scottsdale [R. 76].

In the subsequent telephone conversation with Ege, I informed him that business was bad at Scottsdale [R. 77]; Ege advised me that Delano, California, was "opening up" [R. 77], and suggested that I purchase an airplane ticket for Bakersfield, California, via Los Angeles, California [R. 78] with funds I had earned at Scottsdale [R. 78].

From Burbank, California, I called a number in Delano by telephone [R. 78], which number Ege had given me in his telephone conversation with me [R. 78] and which he told me was the number of Joe Bruno [R. 78] and to call when I reached Los Angeles [R. 78]; I talked with someone unknown [R. 173] at this number, and made arrangements to be met at the Bakersfield airport [R. 174].

At the Bakersfield airport, I was met by Bruno [R. 78], who drove me to a house of prostitution in Delano [R. 78]; on the trip Bruno told me the house belonged to him and his "old lady" [R. 79].

I stayed at the Delano house for two or three weeks [R. 79], and saw Bruno there frequently [R. 79-80], particularly in helping to count the money taken in [R. 80]; that I had no financial transactions with Bruno [R. 177-178].

After leaving Delano, I met Ege at Fresno, California [R. 80] where I gave him part of my earnings [R. 81], and then returned to San Francisco with him [R. 80].

At Ege's suggestion, I worked in houses of prostitution at Yolo, California [R. 142-144] and Isleton, California [R. 81].

I then went from San Francisco to Barstow, California [R. 85] where I worked in a house of prostitution in a nearby town, Newberry [R. 85].

While in Barstow, Ege, on his way to Las Vegas, Nevada, stopped to see me [R. 155] and I gave him a part of my earnings [R. 155]. I gave him about $100 or so.

The house of prostitution where I was working was raided and I was placed under arrest [R. 85-86]; I then got word to Ege, in Las Vegas, to come and get me, which he did [R. 87, 157], driving me to Las Vegas [R. 87, 157].

At Las Vegas, I worked briefly as a prostitute [R. 88], quarreled with Ege [R. 88], left him [R. 88], and returned to San Francisco by bus [R. 88]. This terminated my relationship with Ege [R. 91].

(2) Gene Giomi.

In the Spring of 1952, owned the premises known as 395 Monterey Boulevard, San Francisco [R. 195]; from April 15, 1952, to May 15, 1953, rented the premises to Mr. and Mrs. Boyd [R. 195-196]; that at that time, Boyd introduced Ege to witness, stated that he (Boyd) was going to leave the state, and that Mr. and Mrs. Ege would carry on his obligations [R. 196]; that Ege took over the lease [R. 200] and occupied the premises from May 15, 1953, to January 29, 1954, when the premises were sold [R. 196].

(3) J. W. Ellingson.

In October, 1953, I owned a house located three miles north of Scottsdale, Arizona [R. 201]; on the afternoon of October 6, 1953 [R. 201], I rented this house to Boyd for a period of one year at $150 per month and was paid the first and last month's rent in advance [R. 202]; Boyd was privileged to occupy it beginning October 7, 1953 [R. 203], but I do not know when he actually occupied it [R. 203]; he moved out about October 20, 1953 [R. 203].

(4) George W. Rathjen.

I am the assistant manager at the El Rancho Hotel, Phoenix, Arizona [R. 204]. Mr. and Mrs. Boyd registered into the hotel on September 20, 1953 [R. 204]. They checked out on October 21, 1953 [R. 204]. While there, Boyd made telephone calls to San Francisco [R. 208], but I do not know to whom or what telephone numbers [R. 208].

(5) Charles W. Briley.

In October, 1953, I was operating a bar and restaurant known as the Pink Pony, in Scottsdale, Arizona [R. 209]; I met Boyd in my place of business in the first week of October [R. 209] and had occasion to see him after that [R. 210] every day or every other day for a period of two weeks [R. 210]. At our second meeting, he told me he was interested in leasing a residence in Scottsdale [R. 210]; in a further discussion, Boyd said he was having a hard time financially, and would appreciate my sending him any business [R. 211]. On one occasion Boyd stated to me that two girls were coming from California [R. 212]. I saw Bell in the house at Scottsdale [R. 266-267].

(6) George H. Thomas, Jr.

In October, 1953, I was Constable of Scottsdale Precinct and part-time Deputy Sheriff of Maricopa County, Arizona [R. 215]. Around the middle of October, 1953, I discussed with Boyd the fact that he was operating a house of prostitution, and he stated "we are leaving" [R. 216]. Prior to that, I had visited the house on several occasions [R. 217], and believe I saw the witness Bell there [R. 218].

(7) Kenneth Ward Wright.

In December, 1953, I was a Deputy Sheriff, County of San Bernardino, California [R. 219]. On the evening of December 21, 1953, I had occasion to raid a house of prostitution approximately four miles east of Newbury, California, which is about 25 miles east of Barstow, California [R. 219]. That among the girls arrested was the witness Bell, who was known to me and booked under the name of Cindy Martin [R. 220].

(8) John Goldberg.

From about 1948 to 1954, I was a manufacturer of lingerie [R. 220]. During the Fall of 1953, I had occasion to visit Delano, California, as a lingerie salesman, and visited a place known as "Kitty's", among others [R. 221]. I have occasion to visit a number of houses of prostitution, and am familiar with the language used by those engaged in prostitution [R. 221]. The term "old lady" means that they are with a man [R. 222], whom they call a "fish" [R. 222-223] which is the same as "pimp" [R. 223]. The term "old lady" was applied to Kitty [R. 223]. Kitty's "old man" I heard was Joe Bruno [R. 225]. I have never met Bruno, although I

called at Kitty's place three or four times a year [R. 225]. In the Fall of 1953, I saw a blonde girl at Kitty's place whose name I remember as "Cindy" [R. 226].

(9) John C. Moe [R. 231].

I am, and was in January, 1955, a Special Agent, Federal Bureau of Investigation [R. 231], employed at San Diego [R. 231]. On January 12, 1955, in San Diego, I had occasion to interview Boyd [R. 231]. Boyd told me that in the Fall of 1953, about September, he was in Scottsdale, Arizona [R. 233]; that he stayed at the El Rancho Motel for about 25 days [R. 234]. He stated that he had planned to set up gambling games and that the local constable had given him the "green light" [R. 234]; that he had rented premises in Scottsdale from a Mr. J. Walter Ellingson [R. 235], but had made no money there [R. 235]. Boyd stated that he had purchased a 1953 Cadillac in Phoenix [R. 236], and had given false employment references [R. 236]. Boyd stated that he had first met Ege at the Sarong Club in San Francisco about two years previously, at which time Ege was going to buy a part of the Sarong Club [R. 236]. That his only contact with Ege was when Ege took over his, Boyd's, house in San Francisco, and knew nothing about the activities conducted there thereafter [R. 236]. Boyd denied knowing anything concerning Ege's activities or associates [R. 236]. Boyd stated he was only remotely acquainted with Bruno; that he had heard rumors that Bruno operated a house of prostitution, but thought Bruno too smart to be involved in such an operation [R. 237].

(10) Ray M. Andress [R. 240].

I am, and was in June, 1955, a Special Agent for the Federal Bureau of Investigation [R. 240]. On June 21, 1955, I served warrant of arrest on him [R. 242]. Boyd said that "if taking telephone calls is conspiracy" that he had committed conspiracy [R. 243]. He identified Ege as the person he might have had telephone calls with [R. 243]. Boyd admitted that he had operated a house of prostitution at Scottsdale, Arizona, and that Constance Marie Bell and Marian Louise Berg had worked there for him as prostitutes [R. 243]. Boyd stated he went to Scottsdale about the first part of October, 1953, and that he was down there possibly three weeks [R. 243]; that he had contacted Berg and had talked to her about working at Scottsdale [R. 244]. Boyd stated that there had been several telephone conversations between himself and Ege from Arizona to San Francisco [R. 244].

I had a further conversation with Boyd on June 23, 1955 [R. 245], at which time Boyd said "I know that when Mrs. Bell left Scottsdale she came to Delano, California, but that arrangement was made by Mr. Ege. I had nothing to do with her coming up there to go to work" [R. 245]. Boyd also said "Mr. Bruno has been operating a house around Delano for several years" [R. 246].

Thereupon, the Government rested its case as to all defendants.

Appellant then made motions for judgment of acquittal, or, in lieu thereof motion to dismiss, and motions to strike

from the evidence, including all conversations outside the presence of the appellant and specifically of the testimony of Goldberg [R. 280]. The Court thereupon took under submission the motion for acquittal "until the conclusion of the case" [R. 280-281]. The motions to strike, it was stated by the Trial Judge, would be covered in the instructions to the Jury [R. 281].

Further Proceedings.

The appellant thereupon rested his case, without offering testimony [R. 281]. A request in his behalf that the Jury be instructed that testimony offered in behalf of other defendants was not to be considered against appellant was refused, the Court stating that it would be covered in his instructions [R. 281-283]. Evidence was thereupon received in behalf of the defendant Ege [R. 283-332].

All parties having rested, appellant renewed his motion, previously taken under submission, for a judgment of acquittal, or, in lieu thereof motion to dismiss. This was denied by the Trial Judge [R. 30].

The jury returned its verdict finding the appellant guilty under the second count of the indictment.

Counsel for appellant then made Motion for New Trial [R. 34-36], and Motion in Arrest of Judgment [R. 39-40], which were denied by the Court [R. 37]. Thereafter, the Court pronounced judgment [R. 38-39].

ARGUMENT.

I.

The District Court Erred in Denying Appellant's Motion for a Judgment of Acquittal Made at the Close of the Evidence Offered by the Government and Renewed at the Close of All Evidence and Renewed After the Verdict of the Jury for the Reasons That (A) There Was Insufficient Evidence to Sustain a Conviction, and (B) the District Court Was Without Jurisdiction to Enter Judgment Against the Appellant or to Impose Sentence Upon Him.

Function of Motion for Acquittal.

Rule 29(a) of the Federal Rules of Criminal Procedure provides in part:

> ". . . The Court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment . . . after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses . . ."

In interpreting this rule, it was stated in *Curley v. United States* (C. A. D. C.), 160 F. 2d 229, 232, cert. den. 331 U. S. 837:

> ". . . a trial judge, in passing upon a motion for directed verdict of acquittal must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond reasonable doubt. If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion; or, to state it an-

other way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted . . . In a given case, particularly one of circumstantial evidence, that determination may depend upon the difference between pure speculation and legitimate inference from proven facts."

Necessary Proof of a Conspiracy.

A conspiracy can be proved in one of two ways: (a) direct proof of its formation, or (b) circumstances from which its existence can be properly inferred. In this case, there was offered no direct evidence of the formation of the alleged conspiracy. The government sought to establish the existence of the alleged conspiracy by proof of the overt acts alleged in the indictment and by other circumstances.

A conspiracy is generally defined as a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. The minds of the parties must meet and unite in an understanding way with the single design to accomplish a common purpose. There must be a concert of action, all of the parties working together understandingly, with a single design for the accomplishment of a common purpose.

Probably the leading authority today on the component parts of conspiracy is the case of *Marino v. United States* (9 C. A.), 91 F. 2d 691, cert. den. 302 U. S. 764. Each point in the following quotation from that case is exhaustively annotated by footnotes collecting all pertinent Supreme Court and Court of Appeals for the Ninth Cir-

cuit decisions. For the sake of brevity, these footnotes will not be repeated here:

"A conspiracy is 'a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means.' *Pettibone v. United States,* 148 U. S. 197, 203, 13 S. Ct. 542, 545, 37 L. Ed. 419; *Duplex Printing Press Co. v. Deering,* 254 U. S. 443, 465, 41 S. Ct. 172, 176, 65 L. Ed. 349, 16 A. L. R. 196; and see *United States v. Hutto,* 256 U. S. 524, 528, 41 S. Ct. 541, 543, 65 L. Ed. 1073, and *Weniger v. United States* (C. C. A. 9), 47 F. 2d 692, 693. It is a parnership in criminal purposes. The gist of the crime is the confederation or combination of minds.

"A conspiracy is constituted by an agreement; it is, however, the result of the agreement and not the agreement itself. No formal agreement between the parties is essential to the formation of the conspiracy, for the agreement may be shown 'if there by concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose.' *Fowler v. United States* (C. C. A. 9), 273 F. 15, 19.

* * * * * * * *

"The crime is completed when an overt act (to) effect the object of the conspiracy is done by at least one of the conspirators. An overt act is something apart from the conspiracy, and is 'an act to effect the object of the conspiracy.' *Joplin Mercantile Co. v. United States,* 236 U. S. 531, 535, 35 S. Ct. 291, 293, 59 L. Ed. 705. It need be neither a criminal act, nor the very crime that is the object of the conspiracy. It must, however, accompany or follow the agreement, and must be done in furtherance of the object of it."

Translated into the terms of the instant indictment, there could be no conspiracy to which appellant was a party until the minds of the appellant and at least one of his co-defendants met and united in an understanding way with a single design to accomplish the common purpose of transporting women between California and Arizona and California and Nevada for the purpose of prostitution. Until such meeting of the minds is shown to have occurred, the appellant is not a member or participant in the conspiracy here charged. If a conspiracy for the stated purpose previously existed between his co-defendants, and was continuing, the appellant knew the purpose of the conspiracy and joined it by a meeting of the minds with one of the co-conspirators, then and only then would he be bound by the acts of the others, whether taken before or after his joining the conspiracy, provided those acts were taken pursuant to achieving the purpose of the conspiracy.

(A) There Was Insufficient Proof to Sustain a Conviction.

Just what is there in the record to indicate that there was ever any meeting of the minds between Bruno and either Boyd or Ege, or that Bruno knew of or became a party to a conspiracy to transport women between California and Arizona and California and Nevada for purposes of prostitution?

Four witnesses produced by the Government gave testimony wherein Bruno was mentioned. These were Goldberg [R. 220-230], Moe [R. 231-240], Andress [R. 240-266], and the complaining witness, Bell [R. 58-194, 269-279]. The testimony of Goldberg was stricken from the record [R. 352], and therefore need not be considered.

Clearly, the testimony of Moe and Andress, the Special Agents of the Federal Bureau of Investigation, of conversations which they had with Boyd at a time long after the conclusion of the alleged conspiracy, and at and subsequent to Boyd's arrest on the instant charge, respectively, cannot be considered against Bruno.

Tofaneli v. United States (C. A. 9), 28 F. 2d 581, 582;

Bartlett v. United States (C. A. 10), 166 F. 2d 920, 925.

We are left then with the testimony of the complaining witness, Bell, to determine the question of whether or not the appellant became a party to the alleged conspiracy. All of her testimony which directly or indirectly bears upon Bruno and his alleged participation is so brief that we have reproduced all pertinent portions of it in Appendix A of this brief (App., pp. 1-4).

This testimony may be briefly restated: Bell relates a telephone conversation with Ege, wherein he tells her that Delano was opening up, and suggested she should fly there from Scottsdale, Arizona, where business was bad. She was to use her own money to buy the airplane ticket. When she reached Los Angeles she was to call a telephone number in Delano which Ege gave her and "let him know what time my flight would arrive in Bakersfield." Ege told her the person she was to call was Joe Bruno. Thereafter, Bell flew to Los Angeles, and called the number in Delano. She does not remember who she talked to, a man or woman, but gave information about when her flight would arrive at Bakersfield and how to identify her. At Bakersfield, she was met by Bruno, who drove her to the house of prostitution in Delano. He

told her the house "was his and his old lady's." She worked there two to three weeks and saw Bruno there almost every night helping "count the money and check us out." The house was in charge of a girl named Bobby. Bell never had any money transactions directly with Bruno.

In determining the question of whether or not Bruno became a party to a conspiracy, the telephone conversation between Bell and Ege, being outside the presence of Bruno, cannot be considered.

As stated in *Bartlett v. United States* (C. A. 10), 166 F. 2d 920, 924:

> "Where two or more persons have conspired to commit an offense against the United States, everything said, done, or written by each of them during the existence of the conspiracy and in furtherance thereof is admissible in evidence against the other. However, to render evidence of the acts or declarations of an alleged conspirator admissible against an alleged co-conspirator, the existence of the conspiracy must be shown and the connection of the latter therewith established by independent evidence. The *existence of the conspiracy cannot be established against an alleged conspirator by evidence of the acts or declarations of his alleged co-conspirators, done or made in his absence.* The acts or declarations of a conspirator, prior to the formation of the conspiracy or after its termination, are not admissible against his co-conspirators." (Emphasis added.)

In the case of *May v. United States* (C. A. D. C.), 166 F. 2d 1007, 1008, it is stated:

> ". . . The rules are that one defendant's connection with a conspiracy cannot be established by the

> acts or declarations of *other* defendants in his absence, and that a defendant cannot be bound by the acts or declarations of *other* defendants until (a) the conspiracy has been established and (b) the defendant's participation in the conspiracy has been established."

See, also, *United States v. United States Gypsum Co.* (D. C. D. C.), 67 Fed. Supp. 397, 451 *et seq.,* where a three judge Court has collected and discussed the cases; *Glasser v. United States,* 315 U. S. 60, 62 Sup. Ct. 457; *Kuhn v. United States* (C. A. 9), 26 F. 2d 463; *Nibbelink v. United States* (C. A. 6), 66 F. 2d 178.

Thus, the Government's case boils down to this: Was the evidence of Bruno's meeting Bell at the Bakersfield, California airport subsequent to a telephone call from Los Angeles, California, driving her to Delano, California, telling her en route that the house was "his and his old lady's", and his subsequent presence on the premises at Delano, sufficient, standing alone, to prove that he was or became a party to any conspiracy for the interstate transportation of women for purposes of prostitution in the purview of Section 2421, Title 18, United States Code? For this is all of the direct evidence bearing on Bruno, eliminating acts and declarations of the alleged co-conspirators outside of his presence.

We think the answer must be an emphatic "no".

There is nothing in this evidence to show that he knew or should have known that Bell had traveled or contemplated traveling in interstate commerce, either at her own or another's instigation. Assuming that the telephone call Bell made from Los Angeles, California to a party unknown in Delano, California resulted in Bruno's appearance at the Bakersfield, California airport, there was cer-

tainly nothing indicated by that call, or its contents (assuming them to be admissible, which is not conceded) that would put Bruno, or even the person answering the call, on notice that Bell had started her trip from outside of the State of California. There is absolutely no independent evidence of any association or dealings of any kind between Bruno on the one side and either Boyd or Ege on the other, even at a remote time. There is no evidence of communication among them. Bell does not claim to have discussed with Bruno the origin of her trip, or her association or even acquaintanceship with Ege or Boyd.

Thus, assuming that a pre-existing conspiracy had been formed between Ege and Boyd to transport Bell or other women in interstate commerce (which is not conceded), there is nothing to even infer that Bruno had knowledge of it, its objects or its activities, much less joining in it to effect its purposes. Obviously, he cannot be bound by any acts or declarations of Ege or Boyd taken or made outside his presence unless it be shown by independent evidence that he had knowingly joined the conspiracy.

Bell's Trip From Arizona to California Not in Violation of Section 2421, Title 18, United States Code.

Under the testimony of the witness Bell (and disregarding the directly conflicting testimony of Ege, since it was received after this appellant had rested his case), the circumstances of her trip from Arizona to California were not in violation of Section 2421, Title 18, United States Code, under which the presently charged conspiracy is laid and therefore to which it is restricted. The events described would fall within the purview of Section 2422 of Title 18, United States Code, which is an entirely separate and distinct crime.

The pertinent language in the two sections is: Section 2421: "Any person who shall knowingly . . . cause to be transported . . . in interstate . . . commerce . . . any woman or girl for the purpose of prostitution"; and Section 2422: "Any person who shall knowingly persuade, induce . . . any woman or girl to go from one place to another in interstate . . . commerce . . . for the purpose of prostitution."

In *La Page v. United States* (C. A 8), 146 F. 2d 536, appellant was the operator of a house of prostitution at Fargo, North Dakota, in which one Dora Thomas had been an inmate, but had left for a vacation at Minneapolis, Minnesota. Appellant telephoned to Thomas, asking her to return, which she did. As stated by the Court (p. 537): "Baldly, the evidence is that Dora Thomas made this interstate journey at her own expense because of appellant's telephone request and that both women understood the immoral purpose for which the trip was to be taken." Appellant was charged and convicted under Title 18, U. S. Code 398 (now 2421). The Court of Appeals reversed the judgment and ordered an acquittal, on the grounds that the offense, if any, was of Title 18, U. S. Code 399 (now 2422). Although a dissenting opinion was filed in the *La Page* case, the same Court of Appeals in a subsequent decision, unanimously approved the majority opinion of *La Page v. United States, supra,* in *Hill v. United States* (C. A. 8), 150 F. 2d 760.

See, also:

U. S. v. Saledonis (C. A. 2), 93 F. 2d 302;

Wagner v. United States (C. A. 5), 171 F. 2d 302, cert. den. 337 U. S. 944.

Even under *Section 2422, supra,* some active participation *in the inducement and persuasion* is required. One

cannot be convicted on proof only that he operated a house of prostitution to which apparently women were accustomed to come from other States.

McGuire v. United States (C. A. 8), 152 F. 2d 577, 579.

It was the contention of the prosecution, apparently, that the contents of the telephone conversation between Ege and Bell, and the subsequent meeting of Bell at the Bakersfield airport by Bruno, were sufficient to raise the inference of prior communication between Ege and Bruno, not only with relation to the placement of Bell in a house of prostitution in Delano with which Bruno was allegedly connected but also wherein Bruno was advised of the nature of the alleged pre-existing conspiracy between Ege and Boyd to transport women in interstate commerce. We think such inferences not only cannot be raised from the evidence, but are, in fact, repelled by it. Two facts clearly block such an inference: (1) the telephone conversation with Bell by Ege was apparently in circumvention of Boyd, in view of the fact that Ege got word to Bell through Berg that he would make the call, and the call was made to a telephone booth on the outskirts of Scottsdale, obviously for the purpose of concealment from Boyd; (2) Bell was instructed to call the Delano number *after* she reached Los Angeles, so that the telephone call to Delano making arrangements to be met would be intrastate, and that Bell's starting point after the telephone call to Delano would be within California. Other than Ege's hearsay statement to Bell, there is nothing to indicate that the number given her was in fact that of Bruno, or that Bruno did in fact have a telephone number in Delano. Actually, according to Bell, the house in Delano was managed by Bobby, who had all direct

financial dealings with her. It is proper to infer, if indeed any inference can be drawn from Ege's conversation with Bell, that Ege's prior arrangements for the reception of Bell at Delano, if any were in fact made, were made with Bobby. There is absolutely nothing in the record, by way of admission or by words or actions from which an inference could be drawn, that Bruno knew that Bell was traveling in interstate commerce.

Thus, three facts solidly emerge from the evidence involving the appellant Bruno:

(1) The acts performed by him were not in furtherance of the general conspiracy to "transport women between California and Arizona and California and Nevada";

(2) No knowledge by Bruno of the existence of a conspiracy has been shown;

(3) There is no evidence that appellant Bruno was a party to the formation of the conspiracy.

It would appear, therefore, that appellant comes squarely within the language of the decision of this Court in *Lee v. United States* (C. A. 9), 106 F. 2d 906, wherein it is stated (at p. 907):

> "Appellant's motion for a directed verdict was denied. Appellant contends that the evidence is insufficient to show that he had any part in the alleged conspiracy. It is conceded that the evidence is insufficient to show that appellant was a party to the formation of the conspiracy. It is contended, however, that the evidence is sufficient to show that appellant joined the conspiracy, after its formation—not by joining in the agreement, but by the commission of the overt acts. While one 'who commits an overt act with knowledge of the conspiracy is guilty', he 'must know the purpose of the conspiracy,

however, otherwise he is not guilty.' Marino v. United States, 9 Cir., 91 F. 2d 691, 696, 113 A. L. R. 975, certiorari denied, 302 U. S. 764, 58 S. Ct. 410, 82 L. Ed. 593. See also Craig v. United States, 9 Cir., 81 F. 2d 816, 822, certiorari denied 298 U. S. 690, 56 S. Ct. 959, 80 L. Ed. 1408. Since there is no evidence to show that appellant knew of the existence of a conspiracy or its purpose, *the verdict cannot be sustained.* While there is sufficient testimony from which it might be inferred that appellant transported June Allen from Seattle to Portland for immoral purposes, he was not convicted of such an offense. He was convicted of the offense of conspiring to transport, cause to be transported and aiding and assisting in obtaining transportation of women for immoral purposes.

"No evidence discloses that appellant was a party to the formation of the conspiracy, and there is no evidence to show that when he committed the overt acts he had knowledge of such a conspiracy." (Emphasis added.)

(B) The Trial Court Was Without Jurisdiction to Enter Judgment Against the Appellant or to Impose Sentence Upon Him.

General Legal Principles Involved.

The Constitution of the United States, Amendment VI, provides, in part:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of *the State and district wherein the crime shall have been committed,* which district shall have been previously ascertained by law. . . ." (Emphasis added.)

Jurisdiction to hear a particular criminal case is assumed by the United States District Court on the basis of the allegations in the indictment or complaint that the offense took place in the jurisdiction of the Court to which the indictment or complaint is directed. However after a plea of "not guilty", the jurisdictional averments of the indictment are put in issue and must be proved just like any other of the averments of the indictment. In the absence of their proof, the particular District Court is without jurisdiction to enter judgment against the defendant or impose sentence upon him. Thus, the initial right to hear may be satisfied by the allegations of the complaint, but the right to determine is dependent upon the proof offered and received. Venue is as any other allegation in the indictment, and the burden of proving it rests upon the government. (*Moran v. Jones* (C. C. A. Tenn.), 264 F. 768; *United States v. Jones* (C. A. 8), 174 F. 2d 746. A motion for acquittal raises the question of venue, even though it is not specified as a particular ground. (*United States v. Jones, supra.*)

It is recognized that jurisdiction and venue of the crime of conspiracy, as denounced by *Title 18, United States Code, Section 371,* may lay in several Districts, *i. e.,* the District in which the conspiracy was entered into by the conspirators, or any two of them, or any District in which one or more overt acts in furtherance, and to effect the objects, of the conspiracy took place. See, for example, the opinion of this Court in *Woitte v. United States* (C. A. 9), 19 F. 2d 506, in which Mr. Justice Rudkin stated, at page 508:

> ". . . It is contended that the charge that the parties conspired, at a time and place to the grand jurors unknown is insufficient, and that the overt acts charged were committed without the state

and district of Oregon and without the jurisdiction of the court. The time of the conspiracy was made definite by reference in the charge of conspiracy to the time set out in the charge of the overt acts (*Fisher v. United States,* 2 F. (2) 843); the place of the conspiracy was immaterial, *provided the overt acts were committed within the jurisdiction of the court* (*Hyde v. United States,* 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114, Ann. Cas. 1914A, 614; *Brown v. Elliott,* 225 U. S. 392, 32 S. Ct. 812, 56 L. Ed. 1136; *Ford v. United States,* 47 S. Ct. 531, 71 L. Ed. ....., decided by the Supreme Court April 11, 1927); . . . the overt acts charged . . . the transportation of the liquor thus transferred from the place of transfer into the state and district of Oregon, and the venue was therefore properly laid in that district." (Emphasis added.)

See also the decision of this Court in *Grigg v. Bolton* (C. A. 9), 53 F. 2d 158, 159, in which it is stated:

"By decisions of the Supreme Court of the United States, it is thoroughly settled as the law of conspiracy, that a conspirator may be prosecuted either at the place where the conspiracy is formed or where an overt act pursuant thereto is committed; and that a defendant so charged may be removed to the district where such overt act was committed, even though he had not, prior thereto, been within such district; also that no right secured by the Sixth Amendment to the Constitution is violated thereby. *Hyde v. Shine* (a review of proceedings on removal), 199 U. S. 62, 25 S. Ct. 760, 50 L. Ed. 90; *Hyde and Schneider v. U. S.* (a review after conviction in the same case), 225 U. S. 347, 32 S. Ct. 793, 799, 56 L. Ed. 1114, Ann. Cas. 1914A, 614. In the decision last cited, the court declared that the conspiracy

alone did not constitute the offense. 'It needs,' said the court, 'the addition of the overt act. Such act is something more, therefore, than evidence of a conspiracy. It constitutes the execution or part execution of the conspiracy, and all incur guilt by it, or rather complete their guilt by it, consummating a crime by it cognizable then by the judicial tribunals, *such tribunals only then acquiring jurisdiction.*' . . ." (Emphasis added.)

An even later statement by this Court, enunciating the same principles is in *Smith v. United States* (C. A. 9), 92 F. 2d 460, 461, stating:

"The objection to the indictment is first, that it fails to state where the conspiracy was formed. There is no merit in this contention. The telephone from Honolulu to Los Angeles brings the conspiracy both within the Territory of Hawaii and the Southern District of California. An overt act is more than evidence of a conspiracy. It is a part of the conspiracy itself, and where, as here, it is alleged as occurring in the Territory and in California, it is sufficient to make it an offense within the statute, even though the indictment had stated that the place in which the conspiracy was formed is unknown. *Hyde v. U. S.,* 225 U. S. 347, 360, 32 S. Ct. 793, 56 L. Ed. 1114, Ann. Cas. 1914A, 614; *Brown v. Elliott,* 225 U. S. 392, 400, 32 S. Ct. 812, 56 L. Ed. 1136. *A conspirator may be tried either at the place where the conspiracy is hatched or where the overt act is committed. Hyde v. U. S., supra,* 225 U. S. 347, 360, 32 S. Ct. 793, 56 L. Ed. 1114, Ann. Cas. 1914A, 614; *Grigg v. Bolton* (C. C. A. 9), 53 F. (2) 158, 159." (Emphasis added.)

The Indictment Herein.

The second count of the Indictment presently before this Court [R. 3-6] alleged:

> "That Edward Raymond Ege, Joseph Boyd, alias Joe Boyd, and Joseph Victor Bruno, *at a time and place to the Grand Jury unknown,* in violation of Title 18, United States Code, Section 371, did conspire together, and with other persons to the Grand Jury unknown, to commit an offense against the laws of the United States of America, in that they and each of them did conspire, in violation of Title 18, United States Code, Section 2421, knowingly to transport women between California and Arizona and California and Nevada for the purpose of prostitution." (Emphasis added.)

Obviously, in and of itself, this statement does not show jurisdiction within the Northern District of California. Nor was any direct proof of the place where the conspiracy was formed offered in evidence. Even as to the *existence and formation* of a conspiracy, the Government contented itself with the inference which it claims arises from the proof of the overt acts that there was in fact a conspiracy existing within the time limits set forth in the indictment. Thus we must turn to the overt acts, and the proof offered in support of them, to establish the jurisdiction of the District Court for the Northern District of California, as suggested in *Woitte v. United States, supra,* and *Smith v. United States, supra.*

The second count of the indictment [R. 3-6] then proceeds to charge that "during the existence of said conspiracy and in furtherance thereof and to effect the objects thereof" one or more named defendants committed some fourteen overt acts, each of which is specified. Eight

of the alleged overt acts are laid, in whole or in part, in the Northern District of California. The other six are laid in different States or different Districts. As it was not contended at the trial that any of the last-mentioned six acts took place in the Northern District of California, in whole or in part, we can direct our attention to the eight in which definite allegations were made in the indictment that they took place in whole or in part in the Northern District of California, for the purpose of testing the jurisdiction of the trial forum. The overt acts in question are numbered 1, 2, 3, 4, 5, 8, 10, 11 and 12, respectively. It is the contention of the appellant that not a single one of these overt acts, as alleged, was proven. As to some, no evidence whatsoever was offered; as to some, the Government's purported witness to the event flatly denied the existence of the fact alleged; as to some, the Government offered evidence clearly negativing the alleged events; and finally, the Government completely failed to show that any of the events, even by inference, were "in the furtherance . . . and to effect the objects" of the claimed conspiracy.

The overt acts relied upon to confer jurisdiction on the trial court will be considered individually.

Overt Acts Alleged to Have Occurred in Northern District of California.

(1) *Overt Act 1.* The indictment alleges [R. 4]:

> "In June, 1953, defendants Joseph Boyd, alias Joe Boyd, and Edward Raymond Ege went to 2545 Noriega Street, San Francisco, California, State and Northern District of California."

The bill of particulars furnished by the Government [R. 16] places the time as "On or about June 15, 1953."

No evidence whatsoever was offered in support of this overt act. In fact, the only reference in the record to the address 2545 Noriega Street, was the statement of the witness Giomi that at the time of his testimony, September 27, 1955, he was presently operating a market at that address [R. 197]. There was no suggestion that Ege or Boyd, alone or together, had ever been at that address. There was no evidence that either Boyd or Ege were physically present in San Francisco during the month of June, 1953.

(2) *Overt Acts 2 and 3.* As Overt Act 2, the indictment alleges "In September, 1953, defendant Edward Raymond Ege took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City and County of San Francisco, State and Northern District of California, to 395 Monterey Boulevard of said city" [R. 4]. The bill of particulars [R. 16] places the time as: "On or about September 15, 1953."

As Overt Act 3, the indictment alleges: "In September, 1953 at Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege had a conversation with Constance Marie Bell" [R. 4]. The bill of particulars [R. 16] places the time as "On or about September 15, 1953."

The occasion on which Bell's being at the Sarong Club and at 395 Monterey Boulevard occurred on the same date was with reference to the day upon which Bell first met Ege, and concerning which Bell was the sole witness. She testified that she met Ege for the first time at the Sarong Club [R. 61, 94], where she had gone with a friend named Rosalind, who also was a dancer in the Follies, for the express purpose of being introduced to Ege [R. 100]. In

response to Ege's inquiry as to why she was there, she stated that she had come to see him [R. 100]. That evening [R. 101], she and Rosalind went to Ege's residence at 395 Monterey Boulevard [R. 95] where they discussed prostitution [R. 65], the way it was run and the amount of money to be made [R. 65-67, 97-98]. She decided to go into the business of prostitution for the money to be made [R. 65-67, 97]. Bell stayed at Ege's residence for a week or so on that occasion, and then went to Folsom, California [R. 68] with a girl named Judy Berg, who drove her there [R. 104] to a house of prostitution [R. 69], where she engaged in prostitution for a week or a few days more than a week [R. 69]. All of these events definitely occurred prior to September 15, as that was the date of her sister's birthday, and she definitely recalled that all of these events occurred prior to her sister's birthday [R. 172].

Thus, Overt Act 2 did not take place at all, since Ege did not "take" Bell from the Sarong Club to 395 Monterey Boulevard, but she went there of her own accord with her friend, Rosalind. As to Overt Act 3, this obviously did not take place "on or about September 15, 1953." From the witness' own testimony, her initial conversation with Ege could not have occurred *later* than September 1st, and was probably before that. But of even greater importance, there is nothing in these contacts from which it could be even inferred that there was a pre-existing conspiracy among the defendants or any two of them, nor that they were in furtherance or to effect the objects of a conspiracy to transport women between California and Arizona or Nevada. Since the conspiracy sought to be proved involved only Bell, and no proof of a prior agreement among the defendants was shown, the conspiracy, if any, could not be "hatched" until she appeared

on the scene. Since neither Boyd nor Bruno were present at these meetings, any conspiracy would necessarily have to be formed thereafter.

(3) *Overt Act 4.* As Overt Act 4, the indictment alleges: "In October, 1953, defendant Edward Raymond Ege drove an automobile from Folsom, California, to 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California" [R. 5]. The bill of particulars [R. 16] places the time as: "On or about October 13, 1953."

There is absolutely no proof in the record that Ege drove an automobile from Folsom, California, to San Francisco at any time in the month of October, 1953, or that he had been in or near Folsom during that month, or at any time later than prior to September 15. Actually, this overt act could not have been intended to involve the witness Bell, as, according to Bell's testimony, and that of other Government witnesses, Bell was in Arizona on or about October 13, as will be discussed in connection with Overt Act 5, below.

(4) *Overt Act 5.* The indictment alleges [R. 5]; "In October, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege gave the telephone number in Arizona of defendant Joseph Boyd, alias Joe Boyd, to Constance Marie Bell." The bill of particulars [R. 16] places the time as: "On or about October 20, 1953."

The witness Bell testified that no such event took place at any time, and that she had not testified before the grand jury that it had [R. 123, 165, 184]. Actually, no such event *could* have taken place on or about the date indicated, as demonstrated by other Government witnesses.

Ellingson (owner of the house in Scottsdale, Arizona, allegedly used by Boyd as a house of prostitution) testified that Boyd had vacated it by October 20 [R. 203]; Rathjen, clerk of El Rancho Motel in Phoenix, where Boyd lived during the Scottsdale episode, testified that Boyd checked out on October 21 [R. 204-205]; Briley, the bartender of the Pink Pony at Scottsdale, testified that he visited the house of prostitution and had various conversations with Boyd, including the matter of Briley sending customers to the house, stated that the operation was only for about two weeks, commencing the first week in October [R. 209-210]. Each of these witnesses had been interviewed by the government agents during the course of the investigation [R. 260].

Although reluctant to raise the point, we cannot but wonder if the allegations of the indictment and the bill of particulars in this and similar matters were drawn and supplied to the defendants in good faith.

(5) *Overt Act 8.* As Overt Act 8, the indictment alleges [R. 5]: "In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with Edward Raymond Ege in the City and County of San Francisco, State and Northern District of California." The bill of particulars [R. 16] places the time as: "On or about October 25, 1953."

According to the evidence, Bell had but one telephone conversation with Ege while she was in the State of Arizona [R. 76-77, 91-92, 274-275]. There is nothing whatsoever in the record to indicate that Ege was talking from San Francisco or any other point in the Northern District of California. Thus, the fact of this phone call is without probative value so far as proof of an act in the Northern District of California is concerned. Its

weight so far as aiding in the establishment of a conspiracy is involved will be discussed under another heading in this brief.

(6) *Overt Act 10.* As Overt Act 10, the indictment [R. 5-6] alleges: "In October, 1953, in the City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege took the sum of approximately $700 from Constance Marie Bell." The bill of particulars [R. 16] fixes the time as "On or about November 5, 1953."

No evidence of such an event in the Northern District of California at any time was offered by the Government. The prosecutor offered the testimony of Bell that Bell had earned seven or eight hundred dollars while in Delano, and that Ege had gotten it from her in Fresno [R. 79, 81]; but on cross-examination, this amount shrunk to from two to three hundred dollars and not more than four hundred [R. 140]. She testified that the event took place in Fresno [R. 186], and that she had not testified before the grand jury that it occurred in San Francisco [R. 186]. This Court will undoubtedly take judicial notice that Fresno is in the Southern District of California.

(7) *Overt Act 11.* As Overt Act 11, the indictment [R. 6] alleges: "In October, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the County of Yolo, State of California." The bill of particulars [R. 16] fixes the date as: "On or about November 10, 1953."

No testimony was offered to the effect that Ege drove Bell to the County of Yolo on the date indicated, or at any other time. Bell testified that before going to Barstow, she worked in houses of prostitution at Sacramento and

Isleton for a few days [R. 81]. That she was at a town named Yolo, about five miles from Sacramento for about a week [R. 143-144]; and was at Isleton for about a week [R. 145].

Moreover, here is an act, even if it had been proven, which could not by any stretch of the imagination be proof of the conspiracy as alleged in the indictment, or in furtherance thereof.

(8) *Overt Act 12.* As Overt Act 12, the indictment [R. 6] alleges: "In November, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the City of Barstow, State of California." The bill of particulars [R. 16] fixes the date as "On or about December 7, 1953."

Here again we have the situation of an over act which the Government witness Bell clearly denies as ever having happened [R. 187]. She denies that she testified before the Grand Jury that it did occur [R. 187].

Contention of Appellant.

It is the contention of the appellant herein that the evidence having failed to establish that the conspiracy was formed in, or, in the alternative, the conspiracy having been formed that one or more acts alleged in the indictment to have been done in furtherance thereof and to effect the objects thereof were taken or done within the Northern District of California, then the prosecution must fail. This, because the Northern District of California has not been proven to be the proper venue for the indictment, and the Court was thus without jurisdiction. If this be true, then the appellant has been deprived of the protection of the Sixth Amendment of the Constitution, and the judgment of conviction should be reversed.

II.

The Appellant Was Denied a Fair Trial in That (A) Evidence of Appellant's Reputation and Character Was Introduced as Part of Government's Case, (B) the Jury Was Prejudiced by Remarks of the Prosecutor and Trial Judge as to Safety of Government Witness, (C) a Prejudicial Variance Developed Among the Indictment, the Bill of Particulars and the Government's Evidence, and (D) a Separation of the Counts of the Indictment for Trial Was Denied by the Trial Court.

A. Evidence of Appellant's Character and Reputation Was Erroneously Introduced as Part of Government's Case.

Probably the grossest single error occurring during the trial was the introduction by the prosecution, *with the assistance of the trial judge,* of evidence seeking to establish the reputation of the appellant Bruno as a pimp. As such, this was a gratuitous attack upon his character, flouted primary concepts of the laws of evidence, and clearly deprived the appellant of a fair trial.

It is a universal rule, so fundamental and firmly established as to scarcely require citation of authority that the prosecution cannot initially attack the defendant's general character or reputation. It is only when these matters have been put in issue by the defendant himself, by taking the stand as a witness or by introducing evidence of his own good character, that the prosecution can mount an attack on his reputation for character or credibility as a witness. Such testimony is then and only then received as an exception to the hearsay rule.

See:

Wigmore on Evidence, 3rd Ed., 357, and authorities there collected;

22 *Corpus Juris Secundum* 676, and authorities there collected.

The testimony referred to is that of John Goldberg, a self-described lingerie salesman [R. 221]. It was received over vigorous and continuous objections of defense counsel. Its damning nature and the effect it must necessarily have had upon the minds of the jury can best be demonstrated by referring to the testimony itself. For this purpose, we have set it forth in full, but eliminating the intermingled objections of counsel and colloquies with the trial judge, as Section B of the Appendix hereto, and reference is made thereto.

By the testimony of Goldberg, the prosecution, ably assisted by the trial judge, succeeded in putting before the jury the hearsay statement that the appellant Bruno was known as the "old man" of one Kitty in Delano, and that such term meant that he was a "fish" or pimp. Even the witness recognized the gross hearsay nature of his own testimony. It is also obvious that the prosecutor knew exactly the nature of the testimony he intended to elicit from the witness, as he drove persistently to his goal. And the Court's participation indicates his desire to assist the prosecutor in achieving that objective. Such testimony must necessarily have had a prejudicial effect upon the minds of the jurors, so that no instruction, even if promptly made, would have eradicated it from their consciousness nor palliate its impact.

There was no way in which the defendant could meet such testimony. Testimony of leading citizens that *they*

had never heard such gossip would not accomplish it. His own credibility had been utterly destroyed, without ever having taken the stand, or offered testimony.

Counsel for appellant, at the close of the government's case, moved to strike the above testimony before proceeding with the defense. The Court, however, stated that all such matters would be taken care of in his instructions to the jury [R. 280-281].

In that posture of the case, with the evidence of appellant's alleged character and reputation as a pimp still fresh in the jurors' minds and still before them, appellant could hardly take the stand in his own defense.

The statement of the Judge during the course of rather lengthy instructions that: "I further instruct you that the testimony of the witness Goldberg—you remember him, the lingerie entrepreneur who came here—is stricken from the record, and that you are not to consider it for any purpose whatsoever" [R. 352], could not have cured the fatal defect occasioned by the original admission of the testimony and the refusal of the Court to strike it before the appellant proceeded with his defense, nor have expunged its impact from the jurors' minds.

B. Jury Was Prejudiced by Prosecutor's Statement That Complaining Witness Feared for Her Safety.

At the outset of the cross-examination of the witness Bell, the following occurred [R. 92-93]:

> "(By Mr. Stout, Counsel for Ege):
>
> Q. Where are you living at the present time?
>
> A. In San Francisco.
>
> Q. Where in San Francisco?
>
> Mr. Sparrow (Assistant U. S. Attorney): If Your Honor please, I will object that as incompetent, irrelevant and immaterial.

The Court: Overruled. I can't see any objection. I can't see any objection in this young lady telling us where she lives unless there is some obscure reason that would on the part of the Government prevent it.

* * * * * * * *

Mr. Sparrow: The witness is apprenhensive of possible retaliation against her.

Mr. Stout: Just a moment.

Mr. Sparrow: And she is reluctant.

Mr. Stout: I object to any statement of that nature.

The Court: You wanted to know. But this court will amply protect her. I will see that she has all the protection that is necessary.

Mr. Stout: Well, will Your Honor instruct the jury that they are not to make any conclusion from the remarks of Mr. Sparrow about retaliation?

The Court: I will do that at the proper time."

Later, during the course of same cross-examination, the following occurred [R. 146]:

"Q. (By Mr. Stout): You testified on direct examination in response to a question by Mr. Sparrow that you gave that money to Ege, is that correct? A. I don't know. I am just getting so—

Q. A man is on trial here. I have to ask these questions.

Mr. Sparrow: If Your Honor please, I will object to these speeches—

The Court: Never mind the extra-curricular remarks, counsel.

The Witness: What has that got to do with his trial, being on trial?

The Court: Just a moment. Just a moment. Just calm yourself. Now take it easy. You have been

doing very nicely. Just answer the gentleman's questions. If you don't remember, just say so. Don't let him get you excited. I'll protect you. That is what I am here for.

Mr. Stout: I hope she doesn't need protection, Your Honor.

The Court: If she does, she will get it.

Mr. Stout: I won't put her in a spot where Your Honor will have to protect her. I assure you of that.

The Court: You better not."

The statement of prosecuting counsel that the witness feared retaliation, and the trial judge's statements of protection in connection therewith, gratuitously repeated when the witness was being pressed for answers on material matters, must necessarily have created an adverse impression in the minds of the jurors extending not only to the defendants, but to their respective counsel as well. The highly prejudicial nature of these matters appears so clearly on their face, that further comment is not deemed necessary, except to point out that at no time did the Court, either during the reception of evidence or in his instructions advise the jury not to draw conclusions from the remarks indicated.

C. A Prejudicial Variance Occurred Between the Indictment, the Bill of Particulars and the Proof Offered by the Government.

As will be shown under this heading, considerable variance occurred between the indictment, the bill of particulars and the proof as to the occurrence of the overt acts set forth in the indictment and the dates upon which they occurred, if at all. While it may be conceded that no

single one of the variances, standing alone, would constitute a fatal variance, nevertheless, considered together, they amply demonstrate that the appellant was misled (in some instances, apparently, deliberately), and that the over-all effect was to deprive him of a fair trial.

The attention of this Court is directed to the following variances:

(1) The indictment refers to the conspiracy as being one to transport *women* (plural) in interstate commerce. The bill of particulars refers to Constance Marie Bell as being "one of the women" whom the defendants conspired to transport between California and Arizona and "one of the women" whom the defendants conspired to transport between California and Nevada. However, at the trial, no claim was made nor evidence offered that the alleged conspiracy contemplated more than the one woman, Constance Marie Bell. The conspiracy thus involving only the contemplated transportation of Bell, and in the absence of evidence that at least two persons had entered a conspiracy to transport women or woman unknown, who later materialized in the person of Bell, then there could hardly have been a conspiracy until Bell became known to at least one of the conspirators. Since there was no direct proof of the formation of the conspiracy, and the government relied entirely upon the proof of overt acts as establishing it, then, the earliest the conspiracy could have been formed would be subsequent to latter part of August or the first of September, when Bell met Ege, *at her own request and suggestion.* Thus, Overt Act 1, alleged to have taken place "on or about June 15, 1953", was prior to the formation of any alleged conspiracy. Moreover, if the act referred to was the occasion of Ege taking over Boyd's lease on the Monterey

Boulevard residence, the government's own evidence showed definitely that this event occurred on or before May 15, 1953 [R. 196], which fact was presumptively known to the prosecution, at least when the bill of particulars was furnished.

Thus, assuming that a conspiracy was in fact formed, contemplating interstate transportation of Bell, when is the earliest that it could have been formed? Depending on the overt acts to establish the existence of a conspiracy, the first acts which include concert of action of any two persons looking to the interstate transportation of Bell, was the agreement among Ege, Berg and Bell, looking to Bell's accompanying Berg to Arizona, to work in the house of prostitution of Boyd, and the subsequent trip to Arizona by Bell with Berg and her establishment in the house operated by Boyd. This is the subject of Count One of the indictment, which charges Ege alone with the substantive offense transporting a woman in interstate commerce from San Francisco to Scottsdale for the purpose of prostitution, and lays the time as "on or about the 17th day of October, 1953". The bill of particulars names the "woman" involved as Constance Marie Bell. However, this is not the conspiracy charged in the indictment, either as to parties involved, the time elements involved, nor as an overt act. There was no claim advanced that Judy Berg was one of the "other persons to the Grand Jury unknown" referred to in the indictment. The bill of particulars with relation to the conspiracy count lays the time of Ege giving Boyd's phone number in Arizona to Bell in San Francisco (Overt Act 5) as October 20, 1953; the time of Bell, in Arizona, phoning Boyd (Overt Act 6) as October 22, 1953, and the time of Bell arriving in Delano, California (Overt Act 9) as October 27,

1953. It would thus appear from the indictment and bill of particulars that Bell had made two trips to Arizona, and would appear from the evidence that the government had failed to prove the second of the two trips, since only one trip was indicated.

However that may be, nevertheless the conspiracy could not have been formed until there had been some communication, direct or indirect, between Ege and Boyd or Bruno, or some meeting of their minds relative to the proposed transportation of Bell to or from Arizona. The evidence fails to show that Boyd, at least directly, had anything to do with the plan to send Bell to Arizona. Bell testified [R. 114] that in a conversation at the Sarong Club at which were present Berg, Ege and herself, Berg stated that she (Berg) was going to Phoenix, and a discussion was had about it and that there was a job there. Subsequently [R. 116-117], it was determined that Bell would accompany Berg, and Ege gave Bell $50 to defray her part of the costs of the trip. Apparently, Berg had been in some type of communication with Boyd, as she had the means of communicating with him by telephone at Scottsdale when she reached Phoenix, which neither Ege nor Bell possessed. Berg's conversation with Ege and Bell, referred to above, together with Boyd's statement to Briley that he was expecting two girls from California [R. 212], would bear this out. If a conspiracy existed among anyone to transport Bell to Arizona, then such conspiracy would have come to an end upon the arrival of the two women in Arizona, for the entire purpose of the conspiracy would thus have been completed. And this view of the evidence would appear to comport with all the facts, since Boyd's activities, so far as the record is concerned, came to an end with the

closing of the house at Scottsdale, and his checking out of the El Rancho Motel at Phoenix. Boyd had nothing whatsoever to do with the telephone conversation between Ege and Bell in Arizona, nor in her subsequent trips to California and to Nevada; and, in fact, drops entirely out of the evidentiary picture on the occasion of Bell's departure from Arizona.

The trip by Bell to Delano, California, if pursuant to any conspiracy (which is not conceded), was one of which Boyd was not only not a co-conspirator, but knowledge of which was apparently kept from him (*vide* the placing of the surreptitious telephone call from Ege to Bell at the gasoline station). And knowledge of the interstate travel was apparently to be kept from Bruno (*vide* the instructions to Bell to phone Delano *after* she arrived in California).

The third interstate transportation, namely from Barstow to Las Vegas, was clearly not pursuant to a conspiracy on the part of anyone, unless Bell and Ege can be considered as co-conspirators. This was a trip not pre-arranged by anyone, was at the request of Bell, and was occasioned by the emergency arising from her arrest at Newbury.

Thus, the proof, instead of proving one general conspiracy, may have been indicative of several, none of which fell within the scope of the general over-all conspiracy alleged.

The exact line has not as yet been drawn, apparently, as to at what point the fact that several conspiracies, rather than the one general conspiracy as alleged, has been proven, the variance is fatal. This feature of the law is still in the process of development. See *Berger*

v. United States, 55 S. Ct. 629, 630; the modification of the ruling of the *Berger* case in *Kotteakas v. United States,* 66 S. Ct. 1239; and, finally, the discussion of both Supreme Court rulings by this Court in *Canella v. United States* (C. A. 9), 157 F. 2d 470, 477-478.

Here, however, the variance was clearly harmful, and does not come within the harmless error statute (28 U. S. C. 391), as was suggested in the *Berger* case.

Actually, it would appear that the government has attempted to bind together a number of acts involving Ege and Bell, and by dragging in Boyd and Bruno (who participated in separate and unrelated acts) by their boot-heels, to make a conspiracy of it. Thus, the government has produced the hub, and a loose spoke or two, but no rim to tie them together in a related whole.

(2) There is set forth in the Appendix to this Brief as Section C, showing the acts alleged by the indictment as the overt acts, the dates alleged in the indictment, those alleged in the bill of particulars furnished to the appellant, and the nature of the evidence produced in support of each alleged overt act.

Referring to this exhibit, as well as to the discussion heretofore set forth in this Brief relative to the jurisdiction and venue of the trial court, it will be observed that of the fourteen overt acts, no evidence was offered as to four of them, and the government witness relied upon flatly denied an additional four. Some evidence was offered by the government in support of Overt Acts numbered 2, 3, 8, 9, 13 and 14.

As to Overt Acts 2 and 3, as previously indicated, there is no showing that if these acts occurred, they were pursuant to any conspiracy theretofore formed.

As to Overt Act 8, although evidence was offered that Bell, in Arizona, had a telephone conversation with Ege, there was no evidence that Ege was in San Francisco. Although in direct examination Bell testified to another telephone conversation with Ege, the call allegedly being made from Arizona to San Francisco [R. 91-92], on cross-examination she emphatically denied the latter conversation, saying she was unable to reach Ege on her calls [R. 274-275]. Moreover, the date of the one conversation held could not have been on or about October 25, as alleged in the bill of particulars, as Boyd gave up his tenancy of the Scottsdale house by October 20 [R. 203].

Overt Act 9, if it occurred at all, could not have occurred on the date indicated in the bill of particulars (October 27), for the reason that Bell must necessarily have left Scottsdale not later than October 20.

Attention is directed to the disparity between the amount alleged in the indictment ($900) as Overt Act 13, and the amount testified by Bell ($100 or so).

Neither Overt Acts 13 or 14 were shown to have been taken pursuant to any conspiracy among the defendants named in the complaint, or of a continuing conspiracy of which they had become members.

Two reasonable inferences emerge:

(1) In supplying the overt acts set forth in the indictment, the grand jury either carelessly or deliberately disregarded the evidence of the witness Bell before it as to the occurrence or non-occurrence of certain events.

(2) In supplying the bill of particulars, the United States Attorney either deliberately or carelessly disregarded the evidence before him as to the non-occurrence

of certain of the events alleged, and as to the dates upon which others did occur.

In either event, the result was to mislead the appellant to his disadvantage, to prejudice him with the jury, and to deprive him of a fair trial.

D. A Separation of the Counts of the Indictment for Trial Was Erroneously Denied.

The refusal of the trial court to grant appellant's motion for a severance of counts one and two of the indictment for trial [R. 24-25], resulted in prejudice to this appellant.

It is conceded that such a motion is addressed to the sound discretion of the trial court. Nevertheless, when it is apparent from the pleadings that the joinder will prejudice one of the defendants, as is the case here, it would be an abuse of discretion to deny the motion. The trial itself clearly demonstrates that the motion was well taken.

Under the first count, that is, the substantive offense against Ege, testimony regarding the early meetings of the witness Bell, their conversations, and their activities in San Francisco and Folsom relative to prostitution, were undoubtedly admissible under the substantive count against Ege. But, since no conspiracy was shown to have existed at the time of these events, nor could any be inferred, as pointed out hereinbefore, they were not admissible against Bruno or Boyd under the second count. Only the statements and admissions of a co-conspirator made during the course of the conspiracy and for the purpose of furthering its object would be admissible against them. Otherwise, such statements or admissions are hearsay. Having denied appellant's motion for a severance, the Court then proceeded to over-rule his objections of hear-

say, and finally denied motions to strike such evidence. Clearly, this was in prejudice of the appellant's right to a fair trial, and was reasonably foreseeable prior to the commencement of the trial.

III.

The Trial Court Erred in Refusing to Require Special Verdicts on the Overt Acts Alleged in the Indictment.

It has heretofore been pointed out that a great disparity existed between the allegations of the indictment and the proof offered in support thereof. Of the fourteen overt acts alleged in the indictment, and relied upon by the Government to establish the formation and existence of the conspiracy, and the doing of at least one overt act in the Northern District of California to effect its purpose, no proof was offered as to six, four were flatly denied by the Government witness involved, and there is at least substantial ground for the position that the remaining four were not shown to have been in furtherance of the alleged conspiracy.

Furthermore, subsequent to this appellant having rested his case, the defendant Ege took the stand in his own behalf [R. 283-332] and denied each of the overt acts in which he was alleged to have participated.

While it is the position of the appellant Bruno that he can neither avail himself of nor be bound by the testimony of Ege, nevertheless for the purpose of determining the guilt of Ege as a co-conspirator, his denials were before the jury.

Under the circumstances—that is, where the Government has abandoned some of the overt acts alleged, where as to others the Government has introduced proof denying

them, and where uncertainty (at least) as to the fact, the dates, and whether or not, if taken, the remainder were pursuant to or to effect the purpose of, a conspiracy—the Court should have acceded to the requests of the defendants (including appellant) for special verdicts by the jury on the overt acts.

The law is clear that at least one overt act must be proven beyond a reasonable doubt.

The law is equally clear that the members of the jury must unanimously find that at least one of the overt acts has been proven beyond a reasonable doubt.

Even a defendant in a criminal case is entitled to be brought down by a rifle and not a shotgun.

Conclusion.

It is respectfully urged that the judgment of conviction as to the appellant Joseph Victor Bruno be reversed.

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APPENDIX A.

Section A.

PERTINENT TESTIMONY OF CONSTANCE MARIE BELL REGARDING BRUNO.

"Direct Examination.

"Q. I believe you said you had a conversation—you got word that Ege was going to call you. Did he call you? A. Yes.

Q. And did you have a conversation with him over the telephone? A. Yes.

Q. What was that, would you tell us the substance of that conversation?"

(Objections of hearsay overruled.)

A. It was that business had been bad. I mean, he asked me how the business had been, and I said bad, and he said Delano was opening, and so I went to Delano.

Q. Who suggested going to Delano? A. Eddie.

Q. By Eddie you mean the defendant Ege? A. Yes.

Q. Did you have any conversation with him as to how you were going to get there? A. Well, I was going to fly because they were short on girls there and they had no girls." [R. 76-77.]

* * * * * * * *

"Q. Did you have any discussion in this telephone discussion with the defendant Ege as to how you would pay for this airplane ticket? A. Out of the money that I made.

Q. Did the defendant Ege give you any instructions over the telephone as to who you were to contact in Delano? A. Well, when I got to Los An-

geles I was to call in to Delano in to this number that he gave me and I was to let him know what time my flight would arrive in Bakersfield.

Q. Who was the person you were to call? Did Eddie Ege tell you who that was? A. Joe Bruno." [R. 78.]

"Q. And when you arrived in Los Angeles did you in fact call that number? A. Yes, I did.

Q. And when you arrived in Bakersfield, was anyone waiting there to pick you up? A. Yes, there was.

Q. And who was that? A. Joe Bruno." [R. 78.]

* * * * * * * *

Q. And where did he take you, if anywhere, from the airport? A. He took me to Delano and the house—his house there.

Q. He took you to Delano? Did you have any conversation with him as to whose house that was? A. Well, he told me it was his and his old lady's.

Q. He said it was his and his old lady's? A. Yes.

The Court: Whom did he mean by his old lady, do you know that? A. A girl named Kitty.

The Court: He didn't mean his mother, did he? A. No, he meant this girl.

Mr. Sparrow: Q. This girl you knew as what? A. Kitty.

Q. Kitty? A. Uh-huh.

Q. Did you meet Kitty at the place in Delano? A. No, she wasn't there. She was sick.

Q. And did you work in this place in Delano? A. Yes, I did.

Q. And for about how long? A. For a couple of weeks, for about three weeks, I'll say." [R. 78-79.]

* * * * * * * *

"Q. Do you remember about how much you earned? A. Well, quite a bit, about seven or eight hundred dollars." [R. 79.]

* * * * * * * *

Q. While you were there at the house in Delano did you observe the defendant Bruno about the house? A. Oh, yes, he was there.

Q. Would you say he was there many times? A. He was there almost every night except a couple of times.

Q. And what if anything did you observe him do there at the house? A. He would sit in the kitchen all night until it was time to check out.

Q. Then what would he do, if anything? A. He would help count the money and check us out." [R. 79-80.]

"Cross-Examination.

Q. And do you recall from where you placed the call in Los Angeles? A. From the airport there.

Q. And when you placed the call, did a man or a woman answer at the other end? A. I can't remember.

Q. Do you recall a conversation which you had at that time? A. Just that I was—what time I was, my flight, would get into Bakersfield. But I don't know who I talked to, if I talked to a woman or a man." [R. 173.]

* * * * * * * *

"Q. And who was it you say met you at the airport? A. Joe Bruno.

Q. Joe Bruno? A. (Witness nods head in affirmative.)

Q. Had you ever met him before? A. No." [R. 174.]

Q. Who was it that was in charge of the house while you were there? A. A girl named Bobby." [R. 175.]

* * * * * * * *

"Q. Did you ever pay any money to him? (Referring to Bruno.) A. I never gave him any money directly.

Q. Did he ever give you any money? A. No.

Q. No money transactions between you and Joe Bruno? A. Not directly, no. [R. 177-178.]

Section B.

TESTIMONY OF JOHN GOLDBERG.
[R. 220-230.]

"Q. In the course of your business, did you have occasion to visit a number of houses of prostitution? A. Yes, sir.

Q. In that connection, did you become familiar with the language used by those engaged in the business of prostitution? A. Yes, I did.

Q. Did you become familiar with the meaning of the term 'old lady'?

(Objection overruled.)

A. Yes, I was.

Q. What does that mean? A. Well, that means—

Q. (by the Court) Means what? A. It means they are with some fellow.

Q. Some fellow? In what connection are they with some fellow?

(Objection overruled.)

A. Well, the saying there is, an 'old lady' that they are with somebody, you know, that they are with some man.

Q. What is the term, if any, applied to that man?

(Objection overruled.)

A. Well, they call it fish.

Q. Do they call him by any other name? A. No, fish.

Q. The man I am talking about. A. Yes, about the man. They call him fish.

Q. (by the Court) They call him what? A. They call him fish.

Q. (by the Court) Fish? A. That is the term I know.

Q. Did they also call them pimps?

(Objection sustained.)

Q. Is that term known to you as being synonymous with any other word than fish? A. Yes, well, it is the same as a pimp or fish. That is what they call them.

Q. In connection with your business, was the term, of your own knowledge, 'old lady,' applied to Kitty in Delano?

(Objection overruled.)

A. She was the landlady.

Q. Was the term 'old lady' also applied to her? A. Well, they usually call—in a business they usually call everybody, 'old lady.'

Q. In the meaning in which you just defined the word, 'old lady,' was that term applied to Kitty?

(Objection overruled.)

A. Well, yes. 'Old lady'—you hear that, yes.

Q. Was she described specifically as the 'old lady' of a particular person?

(Objection overruled.)

A. The only thing I know is from hearsay, hearsay that—

(Objection sustained.)

The Court: Perhaps we could get at this in another way.

Q. (by the Court) Did you ever hear Kitty referred to as anybody's 'old lady,' anybody in particular? A. Well, not from the place there, but I have heard it around, just as you hear, you know, 'old man.'

Q. (by the Court) Did you ask—did you find out who Kitty's 'old man' was? A. I don't know. I don't know . . . That is all I heard was his name.

Q. What name had you heard?

(Objection overruled.)

A. Joe.

Q. (by the Court) Tell us what his name was? A. The only thing I ever heard from hearsay I heard it was Joe Bruno, but that is all I know.

(Motion to strike denied.)

Q. To your knowledge have you ever met Joe Bruno? A. No, I never met him." [R. 221-225.]

Section C

Variance Among Indictment, Bill of Particulars and Proof of Overt Acts

Overt Act No.	Date in Indictment, "in":	Date in Bill of Particulars "on or about":	Nature of Event, per Indictment	Location of Event, per Indictment	No Proof Offered	Remarks
1	June, 1953	June 15, 1953	Boyd and Ege went to 2545 Noriega St.	No. Dist. Cal.	No proof offered.	
2	September, 1953	September 15, 1953	Ege took Bell from Sarong Club to 395 Monterey Blvd.	No. Dist. Cal.	No proof offered. Bell went to both Sarong Club and 395 Monterey Blvd. with a friend named Rosalind [R. 61-62, 95].	
3	September, 1953	September 15, 1953	Ege and Bell hold conversation at 395 Monterey Blvd.	No. Dist. Cal.	No proof that this pursuant to a pre-existing conspiracy among any of Defendants. Date of conversation about September 1 [R. 95, 68, 69, 172].	
4	October, 1953	October 13, 1953	Ege drove Bell from Folsom, Cal., to 395 Monterey Blvd.	No. Dist. Cal.	No proof of such an event at any time after before September 15, 1953 [R. 172]. Other evidence indicated Bell in Arizona on October 13 [R. 76, 203, 204-205, 209-210].	
5	October, 1953	October 20, 1953	Ege gave Bell the Arizona telephone number of Boyd	No. Dist. Cal.	Denied by Bell [R. 123, 165, 184].	
6	October, 1953	October 22, 1953	Bell in Arizona had a telephone conversation with Boyd	Arizona	Denied by Bell [R. 164, 184].	
7	October, 1953	October 22, 1953	Boyd drove Bell from Phoenix to Scottsdale	Arizona	Denied by Bell [R. 184-185].	
8	October, 1953	October 25, 1953	Bell in Arizona had telephone conversation with Ege in San Francisco	Arizona and No. Dist. Cal.	No proof that Ege in San Francisco, or in No. Dist. of Calif. at time of conversation or during month of October [R. 76-77, 274-275].	
9	October, 1953	October 27, 1953	Bruno drove Bell from Bakersfield to Delano	So. Dist. Cal.	No proof pursuant to the conspiracy.	
10	October, 1953	November 5, 1953	In San Francisco, Ege took $700 from Bell	No. Dist. Cal.	No proof offered. Bell testified she gave from $200 to $400 to Ege in Fresno [R. 79, 81, 140, 186].	Note variance in months between Indictment and Bill of Particulars
11	October, 1953	November 10, 1953	Ege drove Bell from San Francisco to Yolo County	No. Dist. Cal.	No proof offered.	" " "
12	November, 1953	December 7, 1953	Ege drove Bell from San Francisco to Barstow	No. Dist. Cal. and So. Dist. Cal.	Denied by Bell [R. 187].	" " "
13	November, 1953	December 20, 1953	In Barstow, Ege took $900 from Bell	So. Dist. Cal.	Ege picked up a hundred dollars or so from Bell in Barstow [R. 155-156], close to Christmas of 1953 [R. 157]. No proof pursuant to conspiracy.	" " "
14	December, 1953	December 22, 1953	Ege drove Bell from Barstow to Las Vegas	So. Dist. Cal. and Nevada	No proof pursuant to conspiracy.	